

words, this rule requires compliance with federal regulations related to dental office pretreatment standards without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201- 33.210 and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rule in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the proposed rule includes ensuring sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rule is consistent with these CMP goals and policies, and because this rule does not create or have a direct or significant adverse effect on any coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on March 8, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2017-009-305-OW. The comment period closes on March 12, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Laurie Fleet, Wastewater Permitting Section, at (512) 239-5445.

Statutory Authority

This amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, TWC, §5.103, which establishes the commission's general authority to adopt rules, TWC, §5.105, which establishes the commission's authority to set policy by rule, and TWC, §5.120, which requires the commission to administer the law so as to promote the conservation and protection of the quality of the state's environment and natural resources.

The proposed amendment implements the new regulation in 40 Code of Federal Regulations Part 441.

§305.541. Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System Permits.

Except to the extent that they are less stringent than the Texas Water Code or the rules of the commission, 40 Code of Federal Regulations (CFR); Subchapter N; Parts 400 - 471, except 40 CFR Part 403, which are in effect as of the date of the Texas Pollutant Discharge Elimination System program authorization, as amended, and 40 CFR Parts 437 (*Federal Register*, Volume 65, December 22, 2000), 441 (*Federal Register*, Volume 82, June 14, 2017); 442 (*Federal Register*, Volume 65, August 14, 2000), 444 (*Federal Register*, Volume 65, January 27, 2000), 445 (*Federal Register*, Volume 65, January 19, 2000), 449 (*Federal Register*, Volume 77, May 16, 2012), and 450 (*Federal Register*, Volume 79, March 6, 2014), as amended, are adopted by reference.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2018.

TRD-201800345

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 11, 2018

For further information, please call: (512) 239-6812



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 353. INTRODUCTORY PROVISIONS

SUBCHAPTER B. EMPLOYMENT PRACTICES

31 TAC §353.32

The Texas Water Development Board ("TWDB" or "board") proposes adding new 31 Texas Administrative Code (TAC) §353.32, relating to the agency sick leave pool program, and renaming 31 TAC Chapter 353 Subchapter B to "Employment Practices" to broaden the scope of its subject matter.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE AND SUBCHAPTER RENAMING

Texas Government Code §661.002 requires state agencies to adopt rules relating to the operation of agency sick leave pools. The current Chapter 353 Subchapter B, Employee Training and Education, is proposed to be renamed Employment Practices to allow for inclusion of multiple employment-related rules within a single subchapter.

SECTION BY SECTION DISCUSSION OF THE PROPOSED RULE

Subchapter B. Employee Training and Education.

Section 353.32. Agency Sick Leave Pool.

The subchapter name is revised from Employee Training and Education to Employment Practices to allow for inclusion of multiple rules related to TWDB employment within the subchapter.

The proposed rule outlines the TWDB sick leave pool program and appoints the TWDB Human Resources Director or other employee designated by the Executive Administrator as sick leave pool administrator. The proposed rule authorizes the sick leave pool administrator to prescribe procedures relating to operation of the sick leave pool program.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Rebecca Treviño, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years this rule is in effect, there is no expected additional cost to state or local governments resulting from their administration.

This proposed rule is not expected to result in a reduction in costs to either state or local governments. There is no expected reduction in costs for state and local governments because the proposed rule applies only to employees of TWDB. This proposed rule is not expected to have any impact on state or local revenues. Administering the rule will not require any increase in expenditures for state or local governments because the rule applies only to employees of TWDB. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from this proposed rule.

Because this rule will not impose a cost on regulated persons, the requirement included in Texas Government Code §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because this rule is necessary to implement legislation.

The board invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS

Ms. Treviño also has determined that for each year of the first five years the proposed rulemaking is in effect, there will be no public benefit or cost from the rulemaking because it is only applicable to internal TWDB policy and procedure.

LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years it is in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses, micro-busi-

nesses, or rural communities as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to outline the TWDB sick leave pool program.

Even if the proposed rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Government Code §661.002. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT

The board evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to outline the TWDB sick leave pool program.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). State agencies are required by Texas Government Code §661.002 to adopt rules relating to the operation of agency sick leave pools.

Nevertheless, the board further evaluated this proposed rule and performed an assessment of whether it constitutes a taking un-

der Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires TWDB to operate a sick leave pool program for employees. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect the state's economy. The proposed rule outlines the internal TWDB sick leave pool program.

SUBMISSION OF COMMENTS

Written comments on the proposed rulemaking may be submitted by mail to Mr. Todd Chenoweth, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register*.

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101 and Texas Government Code §661.002.

Texas Government Code §661.002 is affected by this rulemaking.

§353.32. Sick Leave Pool.

(a) A sick leave pool program is established to help alleviate the hardship caused to an employee and the employee's family if a catastrophic illness or injury forces the employee to exhaust all accrued leave time and to lose compensation from the state.

(b) The Human Resources Director or other employee designated by the Executive Administrator will act as Sick Leave Pool Administrator.

(c) The Sick Leave Pool Administrator, with the advice and consent of the Executive Administrator, will prescribe and implement a policy and procedures for operation of the sick leave pool program and include the policy in the Employee Handbook. The policy and procedures must be consistent with Texas Government Code Chapter 661.

(d) Employee donations to the sick leave pool are strictly voluntary and must be made in writing.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2018.

TRD-201800311

Todd Chenoweth

General Counsel

Texas Water Development Board

Earliest possible date of adoption: March 11, 2018

For further information, please call: (512) 463-7686

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 7. PREPAID HIGHER EDUCATION TUITION PROGRAM

SUBCHAPTER N. TEXAS ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) PROGRAM

34 TAC §§7.181, 7.183 - 7.185, 7.187, 7.194

The Comptroller of Public Accounts proposes amendments to §7.181, concerning definitions; §7.183, concerning participation agreement; §7.184, concerning designated beneficiary and eligible individual; §7.185, concerning participant; §7.187, concerning contributions; and §7.194, concerning investments.

The amendments to §7.181 update the citation in subsection (a) to reference the relevant Education Code provisions, instead of the 2015 Senate Bill, which has been recently amended; change "custodian" to "guardian" in subsection (a)(8) and (a)(17) because a custodian is more commonly referred to as a guardian under Texas law; delete "future" in subsection (a)(8) and (a)(20) because they are redundant; clarify that the requirements in subsection (a)(8) and (a)(11) are also subject to Internal Revenue Service regulations or guidance; change "eligibility affidavit" to "eligibility certification," which is self-certified under penalty of perjury (instead of under oath), in subsection (a)(10) and (a)(11) to allow the certification, which is in compliance with state and federal law; clarify that the requirements in subsection (a)(10) are also subject to state or federal guidance; delete subsection (a)(10)(A) and (a)(10)(B) because the language in the subparagraphs is no longer complete since it has been further interpreted by federal guidance; and clarify that expenses referenced in subsection (a)(20) may also be identified in the Internal Revenue Service regulations or guidance.

The amendments to §7.183 change "eligibility affidavit" to "eligibility certification" in subsection (c)(3) and "verification under oath" to "certification under penalty of perjury" in subsection (c)(10) to allow the certifications, which are in compliance with state and federal law, to be made in the Program's online application; and clarify that the requirements in subsection (c)(3) are also subject to state or federal guidance.

The amendments to §7.184 delete the current language in subsection (a) because this language is no longer complete since it has been further interpreted by federal guidance; and simplify the language in the current language of subsection (b) to make it more readable.